

Rule 15. Motions**15.01 Form**

Subdivision 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court, unless it is made orally in court on the record; and
- (e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

15.02 Service and Notice of Motions**Subdivision 1. Upon Whom.**

(a) **Generally.** The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties, the county attorney, and any other persons designated by the court. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the hearing and not the motion upon all participants.

(b) **Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court.** In addition to providing service as required in subdivision 1(a), a motion to transfer a juvenile protection matter to jurisdiction of the Indian child's tribal court under Rule 48.01, or a response to such motion, shall also be served upon the child's parents and any Indian child age twelve (12) or older regardless of party status.

Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five (5) days before it is to be heard, unless the court for good cause shown permits a motion to be made and served less than five (5)

days before it is to be heard. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

(Amended effective January 1, 2004; amended effective August 1, 2009; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Service of Motion to Transfer Juvenile Protection Matter to Jurisdiction of Tribal Court on Child Age 12 or Older. The Indian Child Welfare Act (ICWA) permits the district court to deny a request to transfer to tribal court when there is "good cause" to deny the transfer. 25 U.S.C. section 1911(b). While "good cause" to deny the transfer is not defined in the ICWA, it is addressed in the Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines), which provides that "Good cause not to transfer the proceeding may exist if any of the following circumstances exists....[t]he Indian child is over twelve years of age and objects to the transfer." BIA Guidelines C.3 and C.3 Commentary, 44 Fed. Reg. 67584, 67591 at C.3 (Nov. 26, 1979). Requiring service of the motion to transfer jurisdiction to tribal court upon a child age twelve (12) or older permits the child to be aware of the request to transfer and to raise an objection.

15.03 Ex Parte Motion and Hearing

Subdivision 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes, section 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

(Amended effective January 1, 2007.)

15.04 Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

(a) lack of jurisdiction over the subject matter;

(b) lack of jurisdiction over the child; or

(c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

15.05 Motion to Strike Document

If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked by the judge as stricken, but the document shall remain in the court file.

(Amended effective January 1, 2007.)

15.06 Obtaining Hearing Date; Notice to Parties

Upon request of a party who intends to file a notice of motion and motion, the court administrator shall schedule a hearing which shall take place within fifteen (15) days of the request. A party obtaining a date and time for a hearing on a motion shall file and serve the notice of motion and motion pursuant to Rule 15.02, subdivision 3.

(Added effective August 1, 2009.)

15.07 Timing of Decision

Orders regarding motions shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 10.03.

(Added effective January 1, 2007; amended effective August 1, 2009.)